

Civil Revision No. 2564 of 2006

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 2564 of 2006

Date of decision: 20.11.2006

Love Dev

..... Petitioner.

Versus

Shyam Lal @ Radhey Shyam

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Shiv Kumar , Advocate
for the petitioner.

Mr. Sandeep Vermani, Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 29.04.2006 vide which an application filed by the plaintiff seeking permission to examine Handwriting Expert to give his report about the disputed signatures of defendant on the alleged agreement to sell dated 15.09.1997 has been declined.

When notice of motion was issued learned counsel for the petitioner had contended that defendant had denied having affixed signatures on the alleged agreement for the first time when he filed his affidavit in his examination-in-chief while leading his own evidence. Today learned counsel for the respondent- defendant has appeared before me and has contested this averment. He submits that in written statement itself he had taken a stand that alleged agreement was forged, bogus and fabricated.

He has further taken a stand in reply on merits that no such agreement was executed by the defendant. He further submits that the petitioner had not made a correct statement before this Court when notice of motion was issued. On the other hand learned counsel for the petitioner has again reiterated his contention and stated that signatures on the alleged agreement were specifically denied for the first time only when affidavit was filed by way of examination in chief by the defendant. It is immediately thereafter the present application was moved.

During the course of arguments learned counsel for the parties have produced before me a copy of order vide which issues were framed by the trial Court. The issues framed in the suit read as hereunder:-

- “1- Whether the defendant has entered into the contract to sale the property in dispute to the plaintiff on 15.09.97 on a total sale consideration of Rs.6,25,000/- as alleged ?OPP
- 2- Whether the defendant had received on amount of Rs.1,00,000/- from the plaintiff as earnest money as alleged?OPP
- 3- Whether the plaintiff was always ready and willing and still today and willing to perform his part of contract?OPP
- 4- Whether the plaintiff is entitled for specific performance of the contract as alleged?OPD
- 5- Whether the agreement is forged, bogus and fabricated as alleged ?OPD
- 6- Whether the plaintiff is estopped to file the present suit by his own act and conduct ?OPD
- 7- Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD

8- Relief.”

A reading of issue no.5 would show that the onus of proving this issue “whether the agreement is forged, bogus and fabricated?” is upon the defendant. In this view of the matter I am of the opinion that once the defendant has for the first time in his examination-in-chief taken a categorical stand that he has never signed the alleged agreement the plaintiff should have been given a right to rebut the said evidence.

Even otherwise I am of the opinion that it would be in the interest of justice and conducive to a comprehensive decision of the suit if the plaintiff is permitted to examine Handwriting Expert so as to prove whether or not the disputed signature on the alleged agreement are those of the defendant in the peculiar facts and circumstances of this case.

In view of the aforesaid findings, present revision petition is allowed and the order dated 29.04.2006 is set aside. The copy of this order be given dasti on payment of usual charges.

November 20 , 2006
dinesh

(P.S. PATWALIA)
JUDGE